

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Creation of a Low
Power Radio Service

)
) MM Docket No. 99-25
)
) RM-9208
) RM-9242
)

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

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SUMMARY

In the last 20 years, an unprecedented diversity of media choices have become available to the American consumer. The U.S. radio industry has played a key role in this media revolution, including the construction of more than 3,500 new radio stations since 1980 alone.

But the present success of radio -- and its substantial contributions to the public interest -- only will survive as long as the medium satisfies the needs of U.S. consumers. As an operator of radio stations throughout the United States, Clear Channel knows first-hand that the American radio-listening public expects a quality signal as well as quality programming. Accordingly, Clear Channel applauds the Commission's intention to propose rules that would authorize radio stations to broadcast a digital signal comparable to the audio quality of compact discs or digital television in the immediate future. Such digital audio broadcasting ("DAB") is necessary if radio signals are to be able to compete against the ever-increasing number of digital media, including the Internet and satellite digital radio.

Formal consideration of any LPFM proposal will delay the critical transition to DAB, as well as threaten the present success of radio. Specifically, any LPFM proposal must increase congestion in the FM band, which increases the likelihood of actual interference and reduces the flexibility of stations to adapt to sudden loss of a transmitter site. Moreover, implementation of LPFM prior to DAB will create new technical obstacles -- including the operations of hundreds or thousands of new LPFM stations -- that DAB will not be easily able to overcome,

will force new LPFM operators to incur the costs of analog and digital operations, and will cause the Commission to divert its limited resources from a smooth digital transition to counseling and supervising the operations of many new radio stations.

The Commission has a fundamental obligation to safeguard radio spectrum from inefficient interference. It should not endanger the quality audio signal fundamental to radio's present success by adopting a proposal that is predicated on the elimination of established interference safeguards simply in an attempt to add to the programming diversity already available over the airwaves, on cable local access channels, or via the Internet. Neither should it obstruct the transition of radio into the digital age -- a transition that would benefit all U.S. radio listeners and that is increasingly critical to radio's fundamental ability to compete -- because of the uncertain possibility that still more radio stations may create more diverse radio ownership. Instead, the Commission should postpone consideration of any LPFM proposal until digital audio broadcasting has been successfully implemented throughout the United States.

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To: The Commission

COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Clear Channel Communications, Inc. ("Clear Channel"), pursuant to Section 1.415 of the Commission's Rules, respectfully submits these comments in response to the *Notice of Proposed Rulemaking* in the the above-captioned proceeding, which proposes the creation of up to three different classes of low power FM radio ("LPFM") stations. 1/

In the last 20 years, an unprecedented diversity of media choices have become available to the American consumer. 2/ The maturing of cable television,

1/ *Notice of Proposed Rule Making, Creation of a Low Power Radio Service*, MM Docket No. 99-25 (released February 3, 1999) ("*Notice*").

2/ *See, e.g., Memorandum Opinion & Order, Revision of Radio Rules and Policies*, 7 FCC Rcd 6387 (1992) (§ 2). (noting that the explosion of media choices, including the recent addition of over 700 FM stations to the nation's radio dial through Docket 80-90, had resulted in "an extremely fragmented radio marketplace in which existing and future radio broadcasters [were to] be subject to increasingly severe economic and financial stress.")

the rapid development of the Internet, the proliferation of desktop publishing, the growing acceptance of interactive paging and PCS systems, the promise of satellite broadcast services, and the expansion of terrestrial broadcast services have all contributed to an unprecedented growth in the ability of the individual to learn about his or her world and to disseminate his or her views. With the general support of the Commission, the U.S. radio industry has played a key role in this media revolution, with formats that encourage the interaction of listeners and on-air personalities, a visceral understanding of the importance of local public service, and the construction of more than 3,500 new radio stations since 1980 alone. Moreover, the restoration of radio has directly served the public interest by fostering communities of listeners, not just among persons who live in the same neighborhood or who attend the same institutions, but regional communities that extend across local geography, class, race, gender, and creed.

But radio's present ability to benefit the public interest only will survive as long as the medium satisfies the needs of U.S. consumers. As an operator of radio stations throughout the United States, 3/ Clear Channel knows first-hand that the American radio-listening public expects a quality signal as well as quality programming. As a general rule -- to the extent any generalization can apply to a business as diverse and localized as radio -- the better a station's signal,

3/ Clear Channel is a diversified media company, with radio, television and billboard outlets throughout the United States. Including pending acquisitions, Clear Channel, which is the single largest U.S. radio company -- owns or operates approximately 476 domestic radio stations -- or still less than four percent of the nation's total radio outlets.

the more that listeners will choose the station and, implicitly, the medium of radio. The less attractive a station's signal -- especially as compared to other choices available to a potential listener -- the less the listener is likely to join that station's -- and radio's -- community.

Accordingly, Clear Channel applauds the Commission's intention to propose rules that would enable radio stations to broadcast a digital signal comparable to the audio quality of compact discs or digital television before the summer ends. ^{4/} Such digital audio broadcasting ("DAB") is necessary if radio signals are to be able to compete against the ever-increasing number of digital media, including the Internet and satellite digital radio. Until DAB has been implemented, radio will not be able to provide the high-quality signal that its public will expect in the digital age.

Clear Channel also applauds the Commission's recognition of the crucial relationship between the advent of digital radio and formal consideration of any proposal for new LPFM services. ^{5/} The former will enable radio to improve its service quality to all radio listeners across the nation. The latter may enable additional groups to fulfill their goal of owning their own radio station. Each

^{4/} See, e.g., *Order, Creation of a Low Power Radio Service*, MM Docket No. 99-25 (released May 20, 1999) (announcing that the Commission intends "to launch a rulemaking proceeding regarding digital radio this summer . . . [to help to] focus issues regarding the compatibility of the two services.") (the "*May Order*"). See also *Amendment of Part 73 of the Commission's Rules to Permit the Introduction of Digital Audio Broadcasting in the AM and FM Broadcast Services, Petition for Rulemaking* (filed Oct. 7, 1998).

^{5/} See *May Order* at 2.

proposal will increase the use of the FM band. Each would greatly affect, for good or ill, radio's ability to serve the U.S. public. And each, if it is to be implemented, necessarily will delay implementation of the other.

These and similar reasons require the Commission to analyze each of the proposals, not just as independent changes to radio, but relative to each other. For instance, Clear Channel is aware that Commission precedent, including the Commission's lengthy consideration of digital television, requires that no broad-based technical change to U.S. broadcast service will be seriously considered without extensive actual testing and/or field experience. Clear Channel understands and agrees that the Commission must adhere to this long-established principle with regard to both DAB and LPFM. Accordingly, it is decisively relevant that, unlike LPFM, for which no widespread testing has been conducted, a thorough battery of tests of various DAB formats likely will be completed prior to the end of 1999. On this ground alone, as well as other elements of any comparison of DAB and LPFM, the Commission must decide to enable the DAB transition to be substantially complete prior to any further consideration of LPFM.

In any event, in light of the real risks LPFM poses to existing radio service, the Commission cannot endorse a specific LPFM proposal at this time. The Commission has a fundamental obligation to safeguard radio spectrum from interference. On many past occasions, the Commission even has deemed its *primary* role as being the guardian of interference-free spectrum. It should not endanger the quality audio signal fundamental, directly or indirectly, to all the

public interest benefits of radio by adopting a proposal that is predicated on the elimination of established interference safeguards simply in an attempt to add to the programming diversity already available over the airwaves, on cable local access channels, or via the Internet. Neither should it obstruct the transition of radio into the digital age -- a transition that would benefit all U.S. radio listeners -- because of the uncertain possibility that still more radio stations may create more diverse radio ownership. 6/ At the very least, the Commission's experience with Docket 80-90, which added more than 700 new FM stations but substantially weakened radio's ability to serve the public interest, should convince the Commission that it must remain intensely cautious and dubious about any LPFM proposal. Accordingly, the Commission should postpone consideration of any LPFM proposal at least until digital audio broadcasting has been successfully implemented throughout the United States.

I. THE THREAT LPFM POSES TO RADIO'S CURRENT ABILITY TO SERVE THE PUBLIC IS SUFFICIENT REASON FOR THE COMMISSION NOT TO ADOPT ANY LPFM PROPOSAL AT THIS TIME

A. A Proposal That Imposes Permanent And Substantial Burdens On Radio Spectrum Should Not Be Approved Unless Its Demonstrated Benefits Far Outweigh Its Potential Dangers

The Communications Act dictates that the Commission has a "fundamental" responsibility to ensure "the effective and efficient use" of radio

6/ Cf. *Memorandum Opinion & Order, Revision of Radio Rules and Policies*, 7 FCC Rcd 6387 (1992).

spectrum. 7/ Interference precludes such efficient use. In the case of a particular station, interference prevents an affected listener from enjoying that station's programming, which, among other concerns, limits the diversity of programming available to that listener. But interference also undermines the public's satisfaction with radio as a whole. A listener judges radio, not just as compared to other broadcast stations, but as compared to other media or entertainment sources -- such as compact discs, cable or satellite programming, and the Internet. 8/ To the extent such radio competitors can deliver a better or more consistent audio signal, the less the public will be satisfied with its local radio stations. The more the public is dissatisfied with the worsening signal quality of a particular local radio station *or* of the FM band as a whole, the less likely the public will listen to any sort of radio, and the less publicly beneficial radio will be. Accordingly, the Commission has a legal and practical obligation to limit potential interference.

Consistent with this fundamental obligation, Commission precedent has defined a clear policy of protecting established stations against the risks of inefficient spectrum use and objectionable interference. 9/ For instance, Commission precedent holds that "micro" FM stations typically create too much

7/ Notice at ¶ 21 (citing 47 U.S.C. §§ 151, 303(f) & (g)).

8/ As Chairman Kennard has stated, "Broadcast.com, and RealNetworks, and Spinner.com aren't just Internet companies, they're also broadcasters. In the coming world of convergence, both Internet companies and broadcasters have the opportunity to capture a huge new market." See Speech to the National Association of Broadcasters (April 20, 1999).

9/ See, e.g., 47 C.F.R. §§ 73.207, 73.213 & 73.215.

interference to be deemed beneficial to the public. In fact, as early as 1978, the Commission recognized that an existing class of “micro” FM stations -- noncommercial Class D stations -- served too small of service areas and were generally too inefficient to be consistent with the public interest. 10/ The Commission came to this conclusion despite unsubstantiated allegations that such “micro” stations had “substantive value for enhancing the opportunity for minority ownership.” 11/ In fact, the Commission rejected continuation of “low power operations” for the simple but compelling reason that they would interfere with “other, more efficient operations which could serve larger areas.” 12/

A number of other proceedings confirm that the Commission should refuse to change technical requirements that might result in increased interference to existing or potential radio service. 13/ Even when relief from interference

10/ *Order, Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations*, 69 FCC 2d 240 (¶ 23) (1978) (noting that while such micro-service had some purpose, they could not survive the “question of efficient channel usage”).

11/ *Id.* at ¶ 21.

12/ *Id.* at ¶ 24. The *Notice*, inexplicably, ignores such precedent when the Commission suggests that it wants to limit full power service in order to enable proposed LPFM services. *See Notice* at ¶ 50 (refusing to relax interference safeguards for any but LPFM stations, even if possible, as “existing broadcasters [would] move quickly to improve their own facilities.”)

13/ *See, e.g., Deregulation of Radio (Part I)*, 84 FCC 2d 968, 977-78 (¶ 25) (1981) (refusing to relax technical requirements, lest the nation “see a return to that unregulated period prior to 1927 when chaos rode the air waves”); *Report and Order, Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd 11840, 11849 (¶ 29) (1997) (“*Grandfathered Short-Spacing Order*”) (noting that *Order* would not relax

requirements has been shown to be absolutely necessary, the Commission has declined to extend such relief to any but an existing and limited class of broadcast stations, at least without specific express consent from any adversely affected stations. ^{14/} Indeed, a substantial body of Commission precedent has refused individual requests for waivers of interference safeguards -- despite promises to provide equivalent interference protection to all affected broadcasters and the special circumstances of many such cases -- except when the public interest benefits of the proposed waiver are certain and "compelling." ^{15/}

interference requirements for allotment or assignment criteria (which govern certain proposed changes in existing broadcast service)).

^{14/} See, e.g., *Grandfathered Short-Spacing Order*, 12 FCC Rcd at 11849 (¶¶ 27, 29) (noting that change in interference protections was limited to only a "small group of stations" and that Commission had "no intention of relaxing second-adjacent-channel and third-adjacent-channel spacing requirements . . . for any group except pre-1964 grandfathered stations."); see also *Notice of Proposed Rule Making, 1998 Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, MM Docket No. 98-93 at ¶¶ 17-28 (released June 15, 1998) (proposing some relaxation of interference protections only in very limited circumstances).

^{15/} *Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Denver, Colorado)*, 46 RR 2d 1379 (1980). There, the Commission rejected a short-spaced proposal for a minority-owned radio station in Denver, noting that "to justify a waiver of the Commission's rules on mileage separation requirements, the showing of need must be compelling. . . . While the need for a minority station in Denver is no doubt genuine, it falls short of the justification for waiver of the magnitude of the short-spacing rules involved here." (citations omitted); see, e.g., *Quinnipiac College, Hamden, Connecticut, For a Construction Permit to Modify the Facilities of Noncommercial Educational FM Station WQAQ*, 8 FCC Rcd 6285 (August 30, 1993) (rejecting pleas of Class D NCE-FM station to ignore spacing requirements despite "anomalous facts" and lack of interference).

Consistent with such precedent and policy, and in light of the Commission's obligation to protect the established service and settled expectations of listeners, individual radio stations, and the radio industry as a whole, the Commission should reject any proposal to further crowd the FM spectrum with one or more new classes of additional radio outlets, unless the public benefit is demonstrably great and the potential for increased interference has been thoroughly tested and shown to be minimal. The proposal to create new LPFM services does not satisfy this standard.

B. The *Notice*'s LPFM Proposal Poses the Risk of Significant Interference

The *Notice* proposes to create one, two or three new classes of LPFM stations, which would range in power from one to 1,000 watts, 16/ and would not be subject to third-adjacent and, perhaps, second-adjacent spacing or interference requirements. The proposal cannot help but increase objectionable interference and congestion in the FM band, and, accordingly, diminish the public interest benefits radio can provide.

For example, the addition of primary LPFM radio stations will disrupt existing radio service by curtailing the ability of full power radio stations to adapt to the loss of transmitter sites or other unforeseen circumstances. As the

16/ The *Notice* denotes the class of LPFM stations that have a maximum radiated power of 1000 watts as LP1000 stations; the class with a 100-watt maximum as LP100 stations; and the class with a 10 or fewer watt maximum as "micro-radio." Unless required by context, references to LPFM or low power stations in these comments include all LPFM classes.

Commission has recognized in a number of contexts, such loss of flexibility is itself a threat to the public interest because it ultimately will result in loss of established service. 17/

But the creation of LPFM stations poses a much more immediate -- and more dangerous -- threat to the public interest: the creation of several new classes of FM stations that can ignore second- and third-adjacent channel and other interference safeguards will cause an increased risk of objectionable interference to radio reception throughout the United States. Notably, recent studies confirm that LPFM facilities of the sort suggested in the *Notice* would impair signal quality to large numbers of radio listeners. For instance, persons who listen to clock radios, walkmans or "boom boxes" -- in other words, a substantial percentage of the U.S. radio public -- would face demonstrably increased interference were new LPFM stations to take advantage of the *Notice's* proposal to eliminate second- and third-adjacent channel interference restrictions. The results of such studies only confirm

17/ See, e.g., *Notice of Proposed Rule Making, Grandfathered Short-Spaced FM Stations*, 11 FCC Rcd 7245 (¶¶ 23-25) (1996) (noting that flexibility was critical to protect the limited number of stations that had become short-spaced through *ex post* Commission action); *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, 4 FCC Rcd 1681 (¶ 5) (1989) (allowing small amount of flexibility to short-spaced stations to "ensure the public interest while at the same time providing the required protection to the facilities of other licensees).

that which many full-power operators know from experience: the elimination of established adjacent channel protections will increase interference. 18/

Even if the Commission is, for whatever reason, unwilling to reject LPFM based solely on these studies and experience, such studies at least demonstrate that the Commission *cannot* further consider LPFM proposals until it has developed a complete technical record regarding the risks of interference and increased congestion, not just in a few selected markets, but across the United States. As noted, the need for extensive technical studies before embarking on changes that may cause widespread interference is deeply rooted in Commission precedent. Moreover, such studies should be from as many independent sources as possible so as to provide the opportunity to compare and corroborate data and to minimize the potential for bias, whether from LPFM proponents, politically driven advocates, or the existing industry. Unless such studies demonstrate, beyond substantial doubt, that the drop-in of hundreds of LPFM stations, including some in congested urban areas, would not reduce the overall quality of the FM band, LPFM cannot be adopted. To date, no such comprehensive testing and evaluations, especially by parties with no vested interests in this docket, have been made available for public comment.

Specifically, the *Notice's* sketchy analysis cannot be deemed sufficient support to adopt LPFM. The *Notice* presented no studies detailing the increase in

18/ See, e.g., Comments of Duey Edward Wright, President, Midwest Communications, Inc. at 3 (noting that a FM translator operating on a third-adjacent channel is causing interference to a Class C FM station's operations).

interference that would result should the proposal be adopted, even if it were assumed that every LPFM station operated per the letter of its authorization. ^{19/} Neither did the *Notice* cite extensive precedent in support of the proposal: as noted, only in cases involving an inherently limited class of stations -- such as stations that had become short-spaced only because of changes in Commission regulations -- has the Commission waived its critical safeguards against overcongested airwaves. ^{20/} Such limited waiver experiences are simply too unlike the open-ended LPFM proposal -- which may involve hundreds or even thousands of brand-new stations causing nonconsensual interference to nearly every full power station -- to justify its adoption.

Separately, the *Notice's* failure to distinguish the case of grandfathered short-spaced stations and the instant proposal is troubling because it ignores the historical difference between such stations and the proposed LPFM stations. Short-spaced stations were not originally short-spaced. They became short-spaced because the Commission instituted more limited interference safeguards. By enabling newly short-spaced stations to make certain changes in their operations through specific waiver or modification of the Commission's later-enacted spacing rules, the Commission was only restoring, at least to some limited extent, options that had once been available to the stations before the Commission changed its

^{19/} See, e.g., Dissent of Commissioner Harold W. Furchtgott-Roth, *Notice*, at 1 (noting that the Commission "made no effort to assess, much less quantify" what effect eliminating interference protections would have on existing radio service).

^{20/} See *Grandfathered Short-Spacing Order*, 12 FCC Rcd at 11849 (¶¶ 27, 29).

requirements. Of course, LPFM stations that currently do not exist have no such claim for special treatment. In fact, the experience of grandfathered short-spaced stations would argue strongly that the Commission should not unnecessarily encumber existing stations with *ex post* and widely protested changes to its interference guidelines. In other words, unlike the case of the grandfathered short-spaced stations, the simple equities in this instance argue against any sort of relaxation of interference protections on which existing stations have long relied.

Moreover, the *Notice's* analysis is deficient not only with regard to actual technical and historical proof in support of the LPFM proposal, but also suffers from the bias inherent in its results-oriented presentation. The *Notice* itself admitted that its proposed limits were not ultimately based on detailed interference studies or reasonable estimates of the levels of protection needed by existing stations, but were simply ones that would enable the largest number of LPFM stations to be implemented. 21/ Such back-to-front decision-making -- the Commission wants the result to be B, so it decides A -- casts inherent doubt on the logic and assumptions underlying the entire proposal. And such doubt only is magnified by the apparent failure of the Commission to consider, in any meaningful way, other alternatives that would not threaten such widespread disruption to existing radio services while serving the Commission's stated objectives and the public interest.

21/ See *Notice* at ¶ 50.

C. Any Interference Caused by LPFM Stations Is Likely to Persist Indefinitely

In recent years, the Commission has become increasingly unable to respond promptly to interference caused by non-full power stations, such as translator or low-power television facilities. The introduction of hundreds of LPFM radio stations throughout the country -- unrestricted by tested spacing requirements or interference protections and most likely operating with outdated or low-budget technical equipment under more casual or inexperienced supervision -- only will increase the number of interference complaints, to the detriment of the Commission and the entire radio-listening public.

Worse, as the *Notice* makes clear, the Commission will not be able to resolve LPFM interference promptly, if at all. For example, compared to the technical complexities relating to interference, public interest programming and minimum operating hours with regard to many LPFM stations should be relatively easy to monitor. Yet, the *Notice* already has admitted that the Commission will be unable, for practical reasons, to monitor LPFM programming or operating schedules. 22/ Accordingly, it cannot be ready to police LPFM interference, and it cannot implement LPFM until it is ready to police such interference. Otherwise, the proposal is sure to increase interference far beyond even that noted in any interference study, and is even more likely to cause substantial injury to U.S. radio listenership.

22/ See *Notice* at ¶¶ 72, 77.

Moreover, the Commission has no reason to expect that new LPFM operators will have the resources, the expertise, or the interest necessary to cure any such interference speedily and voluntarily. In fact, it is entirely reasonable to expect that such stations -- for ideological or economic reasons -- will have less interest in cooperating with existing radio stations do among themselves. The past experiences of the Commission with interference from citizen band ("CB") radios 23/ only confirm that resolving low-power interference is likely to be more challenging than the resolution of full power, or even translator, interference. Accordingly, before the Commission can consider any LPFM proposal, it should determine how it can compel elimination of LPFM-induced interference without significant disruption to the public's existing access to radio.

Of course, the challenge of monitoring LPFM operations and resolving LPFM-related complaints does not exist in a vacuum. Each additional complaint creates further delay in resolving existing complaints. If a flood of new complaints occur, as is likely, the delays will snowball, as the Commission's limited enforcement staff will find it harder and harder to focus sufficient resources to resolve any particular case of interference. In this regard, a new LPFM operator's lack of expertise, funds, or interest in resolving an interference complaint only will exacerbate the extent of Commission's resources expended on a single problem, and prolong the delay in resolving that and other interference complaints. As

23/ See, e.g., *James R. Farlow, Thomasville, North Carolina*, 1999 FCC LEXIS 1147 (CIB, March 19, 1999) (completing docket against CB operator more than one year after initial complaint received).

important, every new LPFM-related complaint limits the ability of the Commission staff to address other regulatory issues, again to the overall detriment of the public.

II. THE ADVENT OF DIGITAL RADIO, WHICH IS VITAL TO THE FUTURE OF RADIO, CONFIRMS THAT LPFM SERVICES CANNOT BE AUTHORIZED AT THIS TIME.

A. Radio Cannot Risk Further Delay to Any DAB Transition.

The Commission is well aware of the public interest benefits of digital transmission systems. It has spent 12 years (and counting) in encouraging television into the digital era, including the provision of an additional 6 MHz of spectrum to each existing television station in order to expedite a transition to digital. It has engaged in extensive negotiations seeking to ensure that cable television services will be able to deliver digital programming. It has witnessed the explosion in popularity of compact discs and Internet digital transmissions. It even has relied on the benefits of digital radio technology to justify the creation of an entire new service -- satellite radio -- a digital product that, in less than two years, will begin to compete with free terrestrial radio for the ears of the American public.

Yet, terrestrial radio does not yet know how and when it will be able to begin its DAB transition. In fact, terrestrial radio is the only major communications service that is not yet transitioning to digital means of transmission. In the meantime, a key element of what radio has to offer -- a quality audio signal -- risks falling behind the offerings of radio's increasing number of competitors. The digital transmissions of the Internet, compact discs, and, soon, satellite radio offer an undeniably clearer and sharper means of providing audio programming. As the

economic viability of free, over-the-air radio depends on the quality of its audio signal, neither radio nor the Commission can afford to risk further delay to the advent of digital audio broadcasts.

B. Any Serious Consideration of LPFM Prior to DAB Will Cause Dangerous Delay.

Like the introduction of digital television, DAB stands the best chance of success if it can be implemented in a manner that would encourage consumers to invest quickly in digital-compatible receivers. In other words, the transition should strive to be quick and relatively problem-free. Such a rapid transition to digital radio is not just critical to the acceptance of the new technology by consumers and broadcasters, but also to the future of radio. Simply stated, radio has too many competitors to risk moving slowly to digital.

Accordingly, to be successful, the ultimate framework for a DAB transition must be: i) technically feasible; ii) sufficiently understood and competently implemented by individual stations; and iii) supported by the full panoply of the Commission's radio policy and technical experts. Any consideration of LPFM prior to DAB implementation undermines the likelihood of all three prerequisites.

1. Any introduction of LPFM prior to DAB would interfere with technical considerations critical to DAB

The leading contender in the race to offer a standard for digital radio is some form of an in-band, on-channel ("IBOC") system, which will enable radio to transition to digital without requiring additional spectrum and without requiring

elimination, at least during the transition period, of analog broadcasts. ^{24/} Any successful DAB IBOC system fundamentally involves the complicated task of creating digital side signals that are sufficiently strong as to be able to reach distant receivers but that do not interfere with analog or digital radio transmissions on adjacent channels. Unlike proponents of LPFM, the parties developing DAB IBOC have made extensive efforts to eliminate *all* potential interference to existing stations that such a DAB system might cause, despite the attendant increase in technical complexity. That the ultimate digital standard must be sufficiently robust to be used by all manner of stations in all manner of locales adds to the challenges facing DAB. Such challenges, however, are well known and should be able to be overcome relatively quickly.

In contrast, the obstacles that LPFM would impose on any DAB transition could fatally delay any DAB transition. Having to take into account the ramifications of any LPFM proposal cannot help but add to the technical complications confronting DAB. It is simply not known at this time what direct impact a new LPFM station, free from traditional second adjacent channel restraints, may have on a full power station's digital signal. Certainly, whatever preliminary studies may show, no party can or should assume that new FM congestion resulting from hundreds of new LPFM stations will not result in *actual* interference in the real world.

^{24/} See, e.g., USA Digital Radio Partners, L.P., *Petition for Rule Making* at (October 7, 1998).

At the very least, every new LPFM station added to the FM band prior to the transition is a station that will reduce the flexibility of full power FM stations to adapt their analog and digital signals to best serve the public during the transition period. More troubling -- and more likely -- is that the flood of new LPFM stations will increase actual objectionable interference to analog or digital radio transmissions substantially, especially if LPFM operators with sufficient revenues to transmit both an analog and digital signal attempt to initiate digital versions of their programming without sufficient technical expertise. Any such new interference will diminish the attractiveness of radio's digital signal for consumers, and may jeopardize any transition to the new technology, to the real detriment of all future radio listening in the United States.

Such concerns are not foreign to the Commission. Years prior to the start of the digital television transition period, the Commission froze applications for new television stations. ^{25/} A radio transition to digital may not require an absolute freeze, but it cannot be expected to adjust to the operations of hundreds of new stations without considerable problems or delay. Both common sense and Commission precedent thus confirm that any LPFM proposal -- and its associated new spectrum congestion -- should be considered only after the transition to DAB is complete.

^{25/} See *Sixth Further Notice of Proposed Rulemaking, Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 11 FCC Rcd 10968, 10992-93 (1996) ("To continue to accept new applications for NTSC stations, now that we are approaching the actual start of this new service, could potentially prolong the transition process.")

2. Introduction of LPFM stations prior to that of DAB will increase the risk that consumers will be dissatisfied with DAB *and* increase the costs of every LPFM operator

LPFM poses more than technical risks to a successful DAB transition.

Whatever DAB standard is ultimately adopted, it is the implementation of digital broadcasts by individual stations that ultimately will determine the success of digital radio. Successful DAB implementation by individual stations will require that a station invest its resources in constructing digital transmission facilities, obtain a basic level of technical expertise in digital broadcasting, and prepare to act quickly to eliminate objectionable or unforeseen effects of its digital transmissions.

Brand-new LPFM stations are far less likely to be able to satisfy these basic requirements. A small operator that just expended considerable effort and time building its analog transmitter is unlikely to have the resources or the desire to soon construct a separate digital facility. A new LPFM operator with little experience in broadcasting is unlikely to learn the details of analog transmission and, six months or a year later, learn the necessary fundamentals of digital broadcasting. Likewise, an operator that may not have yet resolved potential analog interference is unlikely to attend to concerns relating to problems relating to digital signals. In short, introduction of LPFM stations prior to DAB implementation greatly increases the chances of listener dissatisfaction with digital radio, as such low power stations are less likely to have the necessary resources or interest to further any implementation of DAB, thereby delaying the critical mass for the transition to digital.

Similar reasoning demonstrates that postponing LPFM consideration until after the DAB transition would prove a considerable benefit to prospective LPFM operators as well. Once digital has become the standard, LPFM stations would not need to construct and maintain two types of transmission facilities or be concerned with the effects of (and the interaction between) two separate signals. Neither need they worry about potential interference from other stations' analog *and* digital signals. Instead, a purely digital LPFM station would have only to run a single operation, which, given the likely smaller staff of many LPFM stations, should offer sufficient reason for the Commission not to consider LPFM prior to general consumer acceptance of DAB. 26/

3. The Commission should not risk dividing its radio expertise between DAB and the time-consuming task of counseling and supervising thousands of potential LPFM applicants

The Commission cannot expect to oversee a digital transition and the creation of new LPFM stations simultaneously. Any LPFM implementation would involve tedious and time-consuming resolution of legal, technical and practical issues on a daily basis. For example, even without considering the huge regulatory burdens resulting from issues of interference, the Commission would have to devote

26/ In addition, digital transition prior to LPFM implementation would enable the Commission to consider other safeguards that may be necessary to govern LPFM operation. For instance, a digital LPFM station may take advantage of its channel to transmit data, not audio programming, despite the immense harm such an economically driven move would cause the FM band. Because the extent that such safeguards will prove necessary cannot be known prior to digital transition, such issues offer another reason to postpone LPFM consideration until the DAB transition is complete.

thousands of staff hours developing new software for LPFM applications, counseling new LPFM applicants, and providing other general assistance simply in order to get new LPFM stations ready for construction. ^{27/} Unless the Commission radically expands its staff and available resources, it does not have enough personnel or money to supervise the creation of LPFM *and* continue to conduct its existing operations, never mind guide radio's critical transition to digital. In light of the clear benefits that DAB offers to the *entire* American listening public, the Commission must assist in the successful implementation of DAB first, and determine whether to adopt LPFM only thereafter.

C. Further Comparison of DAB and LPFM Confirms That DAB Must Precede Any Further LPFM Discussion

Side-by-side analysis of the two proposals confirms that DAB must precede LPFM. First, as noted, the transition to digital radio promises demonstrable benefit to all radio listeners and broadcasters in the United States. The introduction of even hundreds of new LPFM stations, while possibly increasing diversity in radio programming beyond that which 12,500 radio stations already provide, will, at best, benefit only a small niche of American radio listeners. Second, a prompt transition to digital audio broadcasting is critical to the future viability of radio, without which the addition of new radio outlets would be a waste of resources for listeners and potential broadcasters alike. Third, the transition to digital is a finite process, one which has a beginning and an end, and one which,

^{27/} See Notice at ¶¶ 95, 98.

after an initial transition phase, is unlikely to pose a significantly greater burden on FM spectrum (or any future implementation of an LPFM proposal) than currently exists. In contrast, the licensing and monitoring of LPFM stations presumably will be a never-ending process, which permanently will increase the burdens on radio spectrum and the Commission, and, as a result, will subject any subsequent transition to digital radio to more difficult technical and regulatory challenges. Fourth, LPFM implementation and its attendant delay to DAB not only will increase the burdens on FM spectrum, but will, directly or indirectly, diminish the possible locations for the additional antennas radio will need to be able to air digital and analog signals simultaneously. Even if LPFM stations do not occupy space at traditional transmitter locations, 28/ further delay to radio's digital transition cannot help but exacerbate the increasing shortage of towers (as a result of digital television, tougher zoning restrictions, and more wireless facilities), which, in turn, will further threaten the ability of radio to go digital. Fifth, DAB implementation would prompt new interest in audio receiver technology, and give consumers a reason to obtain receivers -- unlike many clock or portable radios of today -- that might be better equipped to handle any introduction of LPFM signals.

All of these reasons independently corroborate that any consideration of LPFM must follow a successful transition to digital audio broadcasting. Unlike television, radio has not yet had to request that the Commission invest extensive

28/ Of course, such failure to use existing transmitter locations will likely result in additional interference that could be avoided through antenna co-location and will, in any event, make it harder to monitor LPFM operations.

new resources into guiding radio's transition to digital. But the Commission should not add new obstacles -- such as the introduction of new LPFM radio stations that are not subject to current interference protections -- to radio's digital transition. Once DAB has been implemented by stations in every region of the country, the Commission may then consider whether and how LPFM services can add to the individual's ability to exchange information and ideas.

III. OVERALL, THE RISKS POSED BY ANY LPFM PROPOSAL TO RADIO'S PRESENT AND IMMEDIATE FUTURE FAR EXCEED ANY PUBLIC GOOD OF SUCH A PROPOSAL AT THIS TIME

As noted, established Commission policy and precedent requires any proposal that could risk a measurable increase in interference to provide an overwhelming net benefit to the public interest. Adoption of the LPFM proposal, at this time, would interfere with the public interest, and may make it effectively impossible for the Commission to resolve interference between full and low power radio stations in any sort of timely manner. It also would reduce substantially the chances of a successful transition to the digital terrestrial radio, a transition which is critical to radio's ability to compete in the imminent future. In short, any LPFM proposal suffers from definite and substantial negatives.

In contrast, the potential positives of the *Notice's* proposal are limited and uncertain. Primarily, the proposal hopes that more radio stations will lead to greater diversity in radio ownership and programming. However, the creation of another tier of radio stations may not increase minority or local ownership, as the Commission can exercise only limited authority to select which parties should

receive any type of broadcast station. Similarly, LPFM may not diversify programming content, as the Commission cannot control a station's programming. Accordingly, it is entirely possible, and even likely, that LPFM stations which seek the broadest possible audience will choose to air the most popular programming, even if similar programming already is carried by several existing stations in the market.

More fundamentally, it is not clear what type of programming diversity would satisfy the Commission. No study has demonstrated a marked decline in format diversity; indeed, in recent years, consolidation appears to have enabled station groups to develop even more niche programming. 29/ In addition, technology has opened and continued to open new venues of expression. A prime example is the unprecedented growth in programming diversity available through the Internet. As Chairman Kennard has noted, "Broadcast.com, and RealNetworks, and Spinner.com aren't just Internet companies, they're also broadcasters. In the coming world of convergence, both Internet companies and broadcasters have the opportunity to capture a huge new market." 30/ And the Internet is not just available to radio broadcasters, but to any individual willing to develop programming. Accordingly, the presence of the Internet ensures that more people than ever before can share their views and interests with a greater audience. 31/

29/ See, e.g., *Notice* at ¶ 9.

30/ See Speech to the National Association of Broadcasters (April 20, 1999).

31/ That the Internet may not be as ubiquitous or mobile as radio -- see *Notice* at ¶ 12 -- does not mean it cannot provide an outlet for substantial community

Likewise, with the age of mimeographs a distant memory, desktop publishing and electronic mail -- including e-mail via television as opposed to personal computer link -- allow wide and prompt exchanges of ideas and information.

At the very least, such considerations suggest that an LPFM proposal actually would be less in the public interest now than at any prior time in radio's history. More broadcast stations and the Internet (as well as other media, such as local access cable channels) offer more possibilities for diverse programming than ever before. And the urgency to transition all of radio into the digital age underscores the dangers of such a sweeping proposal to eliminate established interference protections and create hundreds or thousands of new stations. In light of the confluence of such circumstances, it is clear that the Commission should reject or postpone consideration of any LPFM proposal until such time as the proposal's potential benefits are not outweighed by clear and significant disadvantages.

programming. After all, most persons cannot, for a variety of reasons, listen to the radio all day; likewise, the Commission cannot fail to consider the Internet a significant means of communications simply because most persons do not have round-the-clock access to a particular web site.

IV. CONCLUSION

LPFM radio may someday offer the opportunity to fulfill the dreams of persons wanting to operate their own radio station. However, for all the foregoing reasons, and because the immediate future of radio is too important and too unsettled for the Commission to remove established interference protections and to add hundreds more broadcast outlets at this time, Clear Channel asks that the Commission table consideration of any general LPFM proposal until DAB has been tested and broadly implemented throughout the United States.

Respectfully submitted,

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